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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,266	10/12/2001	Christopher Lockton Brandin	NEO-0107	2263

7590 12/01/2004

Law Offices of Dale B. Halling  
Suite 311  
24 South Weber St.  
Colorado Springs, CO 80903

EXAMINER
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JUNG, DAVID YIUK

ART UNIT	PAPER NUMBER
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2134

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/977,266

Applicant(s)

BRANDIN, CHRISTOPHER  
LOCKTON

Examiner

David Y Jung

Art Unit

2134

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/12/2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **CLAIMS PRESENTED**

Claims 1-27 are presented.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination of this application under 37 CFR 1.114 has been received.

### ***Response to Arguments***

No new arguments were filed with the RCE. Applicant's arguments filed before the RCE have been fully considered but they are not persuasive.

Applicant's arguments are hereby responded again.

Regarding rejection under 35 USC 112 2<sup>nd</sup> Para, Applicant cited MPEP 2173.05 and stated that "an exact mathematical definition" has been presented. No such exact definition has been presented.

Again, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., finite state machines) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Due to the repeated insistence by Applicant, the Office has undertaken another study of file history. The provisional application (from which this application depends) provides some insight. At page 4, the provisional application states: "When a Quanta contains a particular behavior flag, it is considered to belong to the set of Quantas that have that behavior – thus the term 'Behavioral Sets.'" Clearly, even in the provisional application itself does not use the term "behavior" so broadly as in the claims. Thus, the Office is forced to conclude that Applicant's arguments are incongruous with the terms of the claims (especially the term "behavior"). Because of the repeated insistence by Applicant, the Office does not pretend to assume that this term "behavior" of the claims is the same as the general term "behavior." Nevertheless, even the provisional application does not make clear as to the exact nature of the definition that Applicant is using. Thus, Applicant is requested to make this term more clear – such as by incorporating more terms from the application.

### ***Non-finality***

While no amendments were presented with the RCE, the Office acknowledges that the response to arguments could have been more extensive prior to this Office Action. Thus, due to concerns of equity, this Action is made non-final.

### **CLAIM REJECTIONS**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 1-27 are rejected as being unpatentable due to 35 USC 112, 2<sup>nd</sup> as in the previous Office actions.

***Conclusion***

The art made of record and not relied upon is considered pertinent to applicant's disclosure. The art disclosed general background.

***Points of Contact***

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 746-7239, (for formal communications intended for entry)

**Or:**

(703) 746-5606 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

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Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the  
examiner should be directed to David Jung whose telephone number is (571) 272-3836  
or Greg Morse whose telephone number is (571) 272-3838.

David Jung

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Patent Examiner

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a long horizontal stroke extending to the right.

11/29/04